

MARK A. LITMAN & ASSOCIATES, P.A.
PATENT, TRADEMARK & COPYRIGHT ATTORNEYS
York Business Center, Suite 205
3209 West 76th Street
Edina, MN 55435

Telephone (952)832.9090 Facsimile (952)832.9191

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Monica Nassif, et al.	Examiner:	Hui, San Ming R
Serial No.	09/659,502	Group Art Unit:	1617
Filed:	September 11, 2000	Docket No.:	497.001US1
Title:	AROMATHERAPEUTIC ENVIRONMENTAL SYSTEM		

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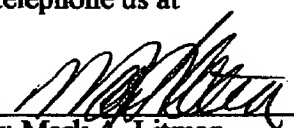
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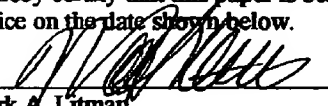
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Applicant: Monica R. Nassif, et al. Examiner: Lauren Wells
Serial No. 09/659,502 Group Art Unit: 1617
Filed: September 11, 2000 Docket No. 497.001US1
Title: AROMATHERAPEUTIC ENVIRONMENTAL SYSTEM

MAIL STOP APPEAL BRIEF - PATENTS


Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The following documents are hereby submitted:

- ☒ Replacement Appeal Brief to the Board of Patent Appeals and Interferences of the
United States Patent and Trademark Office – No Fee
☒ Transmittal Sheet
☒ Facsimile Cover Sheet

The fee for the Appeal Brief was paid for when the original Appeal Brief, dated September 7, 2004, was submitted to the USPTO. Please consider this a PETITION FOR EXTENSION OF TIME for sufficient number of months to enter these papers if an additional extension of time is deemed necessary by the Office. Authorization is hereby given to charge Deposit Account Number 50-1391 if such additional extension is necessary.

MARK A. LITMAN & ASSOCIATES, P.A.
York Business Center, Suite 205, 3209 W. 76th St.
Edina, MN 55435 (952-832-9090)

By: 
Atty. Mark A. Litman
Reg. No. 26,390

CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being facsimile transmitted to the United States Patent and Trademark Office, addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on 17 December 2008.

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DEC 17 2008**BRIEF ON APPEAL**
Serial Number: 09/659,502
Filing Date: September 11, 2000
Title: AROMATHERAPEUTIC ENVIRONMENTAL SYSTEMPage 1
Dkt: 497.001US1**S/N 09/659,502****PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Monica Nassif et al.	Examiner:	Hui, San Ming
Serial No.:	09/659,502	Group Art Unit:	1617
Filed:	September 11, 2000	Docket:	497.001US1
Title:	AROMATHERAPEUTIC ENVIRONMENTAL SYSTEM		

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES****REPLACEMENT BRIEF ON APPEAL****MAIL STOP: APPEAL BRIEF - PATENTS**

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Commissioner for Patents

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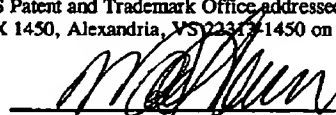
Sir:

The U.S. Patent and Trademark Office is hereby authorized to debit any costs and fees associated with this Petition to Deposit Account No. 50-1391. Appellant(s) is submitting this single copy of the Appeal Brief in Compliance with the requirements of 37 CFR 41.37(c).

Appellant requests a personal appearance at the Board of Appeals, but will defer payment of the fee until after receipt of the Examiner's Answer. Note, a previous fee for filing a Brief on Appeal and a previous fee for Personal Appearance have already been filed in this Application.

I hereby certify that this correspondence is being sent by facsimile to the US Patent and Trademark Office addressed to MAIL STOP: APPEAL BRIEF - PATENTS, Assistant Commissioner of Patents, PO BOX 1450, Alexandria, VA 22313-1450 on 17 December 2008.

Name Mark A. Litman Signature



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REAL PARTY IN INTEREST

The real party in interest in this Appeal is the assignee of the full right, title and interest in this Application, The Caldrea Company, Minneapolis, MN.

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RELATED APPEALS AND INTERFERENCES

The Appellant(s), the legal representative prosecuting this application and Appeal, and the assignee are not aware of any Appeals or Interferences that will directly affect or have a bearing on the Board's of Patent Appeals and Interferences decision in this pending Appeal.

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STATUS OF CLAIMS

Claims 1-30, 32, 36 and 38 have been canceled.

Claims 31, 33-35, 37 and 39-40 are appealed.

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STATUS OF AMENDMENTS

No amendments after final rejection was filed. All amendments previously filed are of record without objection.

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SUMMARY OF CLAIMED SUBJECT MATTER

Claims 31 and 37 are the only independent claims remaining in this Appeal.

31. A method for providing aromatherapy to persons or animals within an ambient environment comprising directly applying a composition consisting of a liquid solution composition to an inanimate surface [Page 22, lines 10-21] to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing, dish washing with soaps, and wood finishing [Abstract], the liquid composition comprising an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1 to 20% by weight of the liquid composition, completing the household function, allowing the aromatherapeutic essential oil to remain within the ambient environment to effect aromatherapy on persons or animals within the ambient environment, the solvents in said liquid composition consisting of materials selected from the group consisting of water and alcohols, [Page 22, lines 1-21] wherein the pH of the composition is from 6.5-7.0. [Page 23=25, examples]

37. A method for providing aromatherapy to persons or animals within an ambient environment comprising directly applying a composition consisting of a liquid solution composition to an inanimate surface [Page 22, lines 10-21] to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing, dish washing with soaps, and wood finishing, [Abstract] the liquid composition comprising an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1 to 20% by weight of the liquid composition and from 10% to 40% by total weight of the composition of a long chain aliphatic alcohol, completing the household function, allowing the aromatherapeutic essential oil to remain within the ambient environment to effect aromatherapy on persons or animals within the ambient environment, the solvents in said liquid composition consisting of materials selected from the group consisting of water and alcohols. [Page 22, lines 1-21]

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GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Solely for the purposes of expediting this Appeal and complying with the requirements of 37 C.F.R. 1.192(c)(7), the following grouping of claims is presented. This grouping is not intended to constitute any admission on the record that claims within groups may or may not be independently asserted in subsequent litigation or that for any judicial determination other than this Appeal, the claims may or may not stand by themselves against any challenge to their validity or enforceability.

- 1) Claims 31, 33-35, 37 and 39-40 have been rejected under 35 USC 112, second paragraph as being indefinite
- 2) Claims 31, 33-35, 37 and 39-40 have been rejected under 35 USC 103(a) as unpatentable over WO98/21307 (corresponding to US Patent No. 6,114,298, Petri) in view of Remington's Pharmaceutical Science.

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ARGUMENTS ON APPEAL

- 1) Claims 31, 33-35, 37 and 39-40 have been rejected under 35 USC 112, second paragraph as being indefinite.

It is asserted that essential details are omitted, specifically elements needed to make the claimed composition a solution. It is asserted that it is not understood, for example, how the composition of the present invention with an essential oil, water and a surfactant) e.g., claim 33) becomes a solution composition. It is asserted that with two phases in combination with the surfactant, it is natural for the composition to become an emulsion, not a solution.

The reason that the third component is recited is that surfactants act to retain oil in water in solution (molecular distribution) rather than as an emulsion. This is well known in the art, as shown by the attached definitions:

<http://dermatology.about.com/od/glossarys/g/surfactant.htm> A shortened form of "surface-active agent", a surfactant is a chemical that stabilizes mixtures of oil and water by reducing the surface tension at the interface between the oil and water molecules. Because water and oil do not dissolve in each other a surfactant has to be added to the mixture to keep it from separating into layers. Surfactants in cosmetics provide one or more of six functions:

- Detergents - for cleansing
- Wetting agents - in perms
- Foaming agents - for shampoos
- Emulsifiers - in creams and lotions
- Conditioning agents - in skin and hair-care products
- Solubilizers - for perfumes and flavors

By stabilizing the molecules in contact with each other, rather than just at phases, a solution is maintained. This is similar to ingredients added to salad dressings that keep the dressing of aqueous materials (vinegar) and oils from emulsifying.

See also: <http://www.businessdictionary.com/definition/surfactant.html>

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Surface active agent. Natural or synthetic substance that allows or promotes 'wetting' of a soiled surface, and dispersion or suspension (emulsification) of greasy soils in a solution. Surfactants achieve this by reducing the surface tension of the solvent (such as water) or the interfacial tension between two non-miscible liquids such as water and oil. Depending on the application, surfactants are mixed with builders or pH boosters (such as carbonates, phosphates, silicates), foam boosters, and suitable solvents (such as alcohols or hydrocarbons) to formulate household, industrial and personal care detergents.

In fact, many detergents are defined as organic materials that are surfactants in aqueous solutions. It is well known to those skilled in the art that surfactants can be used to bind water molecules and oleophilic molecules in a stable solution.

This rejection is in error. One skilled in the art, seeing the combination of solution, water, oil and surfactant is enabled in assuring that it is a solution. Even if additional ingredients were used (and they are not essential), the claim would encompass those mixtures with additional ingredients.

- 2) Claims 31, 33-37 and 39-40 have been rejected under 35 USC 103(a) as unpatentable over WO98/21307 (corresponding to US Patent No. 6,114,298, Petri) in view of Remington's Pharmaceutical Science..

The disclosure of Remington cannot be used as applied in this rejection. Even if assuming that the underlying disclosure of Petri overlaps the recitation of the claims, except for the use of Tween 20, all additives are not equivalent, all additives are not useful in every possible generic category of useful compositions (e.g., surface cleansers), and the interaction of additives, especially an additive as uniquely structured as the cyclic Tween 20, cannot be predicted.

It is furthermore an error to assert that "It is known that various non-ionic surfactants as [*sic*, "are"] useful in the composition of '298. [Petri] Therefore, employing any well-known pharmaceutically and cosmetically acceptable surfactant, including Tween 20..." would be obvious. Additionally, the composition has been limited to "consisting of a solution" while the Petri composition, as an essential element of the invention, requires the composition to be an emulsion. Making the composition of the claims a solution requires **not only ignoring requirement of Petri to form an emulsion**, but also fails to instruct the recited balancing of ingredients and materials recited as:

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- a) Maximum pH of 6.0 versus the pH of at 6.5-7.0 in claim 31 and 37.
- b) Maximum alcohol chain length of 6, versus long-chain aliphatic alcohols (chain lengths of at least 10) in claims 34, 35, 36, 27, 38 and 39.
- c) The use of Tween 20 complexing agent in claims 33 and 38.

It must be realized that although **Petri** makes some general statements about the efficacy of the disclosed compositions in general terms, the functionality of the lower carbon length alcohols (C1-C6) is described as important to the antimicrobial/disinfecting properties of the composition (note in Table IV that 50% of the antimicrobial activity comes from the very low carbon atom ethyl alcohol). It would therefore not be obvious to remove the essential emulsion nature of **Petri** and optimize other ingredients to obtain an unexpected result.

This rejection fails to provide a basis for destroying the underlying and required physical characteristic of **Petri** as an emulsion and to add the unique Tween 20 surfactant.

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CONCLUSION


All rejections of record have been shown in detail to be in error. The rejection should be reversed and all claims should be indicated as allowable.

Applicants believe the claims are in condition for allowance and request reconsideration of the application and allowance of the claims. The Examiner is invited to telephone the below-signed attorney at 952-832-9090 to discuss any questions that may remain with respect to the present application.

Respectfully submitted,
MONICA NASSIF

By their Representatives,
MARK A. LITMAN & ASSOCIATES, P.A.
York Business Center, Suite 205
3209 West 76th Street
Edina, MN 55435
(952)832.9090

Date 17 DECEMBER 2008 By


Mark A. Litman
Reg. No. 26,390

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Name: Mark A. Litman

Signature 

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CLAIMS APPENDIX

1-30. (CANCELLED)

31. (ON APPEAL) A method for providing aromatherapy to persons or animals within an ambient environment comprising directly applying a composition consisting of a liquid solution composition to an inanimate surface to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing, dish washing with soaps, and wood finishing, the liquid composition comprising an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1 to 20% by weight of the liquid composition, completing the household function, allowing the aromatherapeutic essential oil to remain within the ambient environment to effect aromatherapy on persons or animals within the ambient environment, the solvents in said liquid composition consisting of materials selected from the group consisting of water and alcohols, wherein the pH of the composition is from 6.5-7.0.

32. (CANCELED).

33. (ON APPEAL) The method of claim 31 wherein the composition comprises Tween 20 in a concentration of from 0.1% by weight to 5.0% by weight of the composition.

34. (ON APPEAL) The method of claim 31 wherein the composition comprises from 10% to 40% by total weight of the composition of a long chain aliphatic alcohol.

35. (ON APPEAL) The method of claim 31 wherein the composition comprises from 50% to 85% by total weight of the composition of a long chain aliphatic alcohol.

36. (CANCELLED)

37. (ON APPEAL) A method for providing aromatherapy to persons or animals within an ambient environment comprising directly applying a composition consisting of a liquid solution composition to an inanimate surface to effect a household function selected from the group

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consisting of surface cleaning, surface shining, degreasing, cleansing, dish washing with soaps, and wood finishing, the liquid composition comprising an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1 to 20% by weight of the liquid composition and from 10% to 40% by total weight of the composition of a long chain aliphatic alcohol, completing the household function, allowing the aromatherapeutic essential oil to remain within the ambient environment to effect aromatherapy on persons or animals within the ambient environment, the solvents in said liquid composition consisting of materials selected from the group consisting of water and alcohols.

38. (CANCELLED)

39. (ON APPEAL) The method of claim 37 wherein the composition comprises Tween 20 in a concentration of from 0.1% by weight to 5.0% by weight of the composition.

40. (ON APPEAL) The method of claim 37 wherein different liquid compositions are applied to different inanimate surface to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing, dish washing with soaps, and wood finishing, and a single aromatherapeutic essential oils from two different liquid compositions on two different surfaces are allowed to remain within a single ambient environment to effect aromatherapy on persons or animals within the single ambient environment

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EVIDENCE APPENDIX

Neither Appellants nor their counsel in this Appeal are aware of any secondary or supplemental evidence submitted during the prosecution of this Application that must be considered by the Board of patent Appeals in this decision.

Because of the new ground of rejection in the Final Office Action, Applicants have included the printed text from a website with this Brief.

<http://dermatology.about.com/od/glossarys/g/surfactant.htm> A shortened form of "surface-active agent", a surfactant is a chemical that stabilizes mixtures of oil and water by reducing the surface tension at the interface between the oil and water molecules. Because water and oil do not dissolve in each other a surfactant has to be added to the mixture to keep it from separating into layers. Surfactants in cosmetics provide one or more of six functions:

- Detergents - for cleansing
- Wetting agents - in perms
- Foaming agents - for shampoos
- Emulsifiers - in creams and lotions
- Conditioning agents - in skin and hair-care products
- Solubilizers - for perfumes and flavors

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RELATED PROCEEDINGS APPENDIX

Neither Appellants nor their counsel on this Appeal are aware of any proceedings before the US Patent and Trademark Office or any US Judicial or Quasi-Judicial authority that relates directly towards any issues in this Appeal.

About.com. Dermatology



Surfactant

By Heather Brannon, MD, About.com Created: March 16, 2007

About.com Health's Disease and Condition content is reviewed by the

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Definition:

A shortened form of "surface-active agent", a surfactant is a chemical that stabilizes mixtures of oil and water by reducing the surface tension at the interface between the oil and water molecules. Because water and oil do not dissolve in each other a surfactant has to be added to the mixture to keep it from separating into layers. Surfactants in cosmetics provide one or more of six functions:

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- Foaming agents - for shampoos
- Emulsifiers - in creams and lotions
- Conditioning agents - in skin and hair-care products
- Solubilizers - for perfumes and flavors

Pronunciation: sur-FAK-tant - (noun)

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